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2
3 UNITED STATES COURT OF APPEALS
4 FOR THE SECOND CIRCUIT
5

6 SUMMARY ORDER
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8 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER
9 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY
10 OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY
11 OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR
12 IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.
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14 At a stated term of the United States Court of Appeals for the Second Circuit, held at the
15 Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 11th
16 day of August, Two thousand and six.

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18 PRESENT:

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20 HON. BARRINGTON D. PARKER,
21 HON. RICHARD C. WESLEY,
22 HON. PETER W. HALL,
23 *Circuit Judges.*
24

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26 Xiao Qin Shi,
27 _____ *Petitioner,*
28

29 -v.-

No. 04-4436-ag
NAC

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31 Alberto R. Gonzales,* Attorney General
32 *Respondent.*
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35 FOR PETITIONER: Frank R. Liu, New York, New York.

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37 FOR RESPONDENT: Margaret M. Chiara, United States Attorney for the Western
38 District of Michigan; J. Joseph Rossi, Assistant United States
39 Attorney, Grand Rapids, Michigan.
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* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as the respondent in this case.

1 UPON DUE CONSIDERATION of this petition for review of the Board of Immigration
2 Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the
3 petition for review is DENIED.

4 Xiao Qin Shi, through counsel, petitions for review of the July 2004 order affirming the
5 Immigration Judge’s (George T. Chew) decision denying her application for asylum, withholding
6 of removal, and relief under the Convention Against Torture (“CAT”). We assume familiarity
7 with the underlying facts and the procedural history.

8 When the BIA adopts the decision of the IJ and supplements the IJ’s decision, this Court
9 reviews the decision of the IJ as supplemented by the BIA. *See Yan Chen v. Gonzales*, 417 F.3d
10 268, 271 (2d Cir. 2005). We review the agency’s factual findings under the substantial evidence
11 standard. *See* 8 U.S.C. § 1252(b)(4)(B); *Jin Hui Gao v. United States Att’y Gen.*, 400 F.3d 963,
12 964 (2d Cir. 2005); *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73-79 (2d Cir. 2004); *Secaida-Rosales*
13 *v. INS*, 331 F.3d 297, 306-13 (2d Cir. 2003); *Diallo v. INS*, 232 F.3d 279, 286-88 (2d Cir. 2000).
14 It is our well-established practice to afford “particular deference to the credibility determinations
15 of [an] IJ.” *Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003) (internal quotation marks
16 and citation omitted).

17 We are persuaded that substantial evidence supports the IJ’s and BIA’s determination that
18 Shi failed to establish a reasonable probability of persecution upon return to China through
19 credible testimony. The IJ’s adverse credibility determination was based upon several relevant
20 inconsistencies between Shi’s airport statement and her testimony. *See Secaida-Rosales*, 331
21 F.3d at 307 (stating that it is well-settled that adverse credibility determinations must be based on
22 “specific, cogent reasons” that “bear a legitimate nexus” to the finding).

1 Petitioner’s asylum claim was based upon incidents allegedly arising from her informing
2 a pregnant neighbor of officials’ intention to enforce a birth control policy against her. The IJ
3 noted that during her airport interview, Shi stated that she helped more than one person identified
4 by the family planning agency, but during her testimony, she indicated that she helped only her
5 neighbor. During the interview, Shi alleged that officials came to her home to arrest her and that
6 she pushed an official and escaped. However, at the hearing, Shi testified that she was locked
7 under a stairway in the family planning office. Petitioner was unable to provide explanations for
8 either of these discrepancies. These inconsistencies go to the heart of Shi’s claim since they
9 relate to the only basis for her asserted fear of future persecution; therefore, they afford
10 substantial support for the IJ’s adverse credibility determination. *See Ye v. Dep’t of Homeland*
11 *Security*, 446 F.3d 289, 295 (2d Cir. 2006) (“[Where] the BIA has ‘identified a material
12 inconsistency in an aspect of [a Petitioner’s] story that served as an example of the very
13 persecution from which he sought asylum,’ we hold that the inconsistency afford[s] substantial
14 evidence to support the adverse credibility finding.”) (quoting *Majidi v. Gonzales*, 430 F.3d 77,
15 80 (2d Cir. 2005)).

16 Based on her inconsistent testimony and her inability to provide sufficient corroboration,
17 the IJ appropriately deemed Shi incredible. *See Diallo*, 232 F.3d at 284 (“[W]here it is
18 reasonable to expect corroborating evidence for certain alleged facts pertaining to the specifics of
19 an applicant’s claim, such evidence should be provided or an explanation should be given as to
20 why such information was not presented.”) (internal quotation marks and citation omitted).

21 We agree with the IJ’s conclusion that none of the incidents Shi related amount to
22 persecution within the meaning of the INA. *See Yuan v. U.S. Dep’t of Justice*, 416 F.3d 192, 198

1 (2d Cir. 2005) (explaining that short detention without evidence of mistreatment does not
2 amount to persecution). Finally, none of the incidents has a sufficient nexus to any of the
3 protected grounds listed under the INA. *See Ye*, 446 F.3d at 292-293. To the extent Petitioner's
4 withholding of removal or CAT claims rested on her fear of persecution or torture due to her
5 opposition to China's family planning policy, the IJ's asylum determination precluded success on
6 these claims since they require a higher burden of proof. *See Wu Biao Chen*, 344 F.3d at 276.
7 Accordingly, we conclude the BIA's decision was based on substantial evidence.

8 We have considered all other arguments and find them to be without merit. For the
9 foregoing reasons, the petition for review is DENIED. Having completed our review, any stay of
10 removal that the Court previously granted in this petition is VACATED, and any pending motion
11 for a stay of removal in this petition is DENIED as moot.

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15 FOR THE COURT:

16 Roseann B. MacKechnie, Clerk

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18 By: _____
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